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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,300	08/21/2003	Roger D. Ewert	7345	7185

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EXAMINER

WALK, SAMUEL J

ART UNIT PAPER NUMBER

2632

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/645,300	<b>Applicant(s)</b> EWERT ET AL.	
	<b>Examiner</b> Samuel J Walk	<b>Art Unit</b> 2632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 42-47 is/are allowed.
- 6) ☒ Claim(s) 1-10, 13-24 and 27-41 is/are rejected.
- 7) ☒ Claim(s) 11, 12, 25 and 26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>08/21/2003</u> . | 6) <input type="checkbox"/> Other: ____  |

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**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 6-8, 10, 13-14, 19-20, 21 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Ewert (US 5515026).

In reference to Claim 1, Ewert discloses a total alert driver system wherein claimed plurality of randomly selected different groups of audible sounds met by variable natural sounds such as clicks, snaps, cracks, pops, crunches, ticks, clacks, zaps, sirens, beeps and even voice messages, see Col. 6 lns 29-44. Ewert further discloses the total alert system (20) utilizes natural sound in the audible frequencies 16 to 20,000 Hz.

In reference to Claims 6-7, see above rejection in reference to Claim 1, specifically the range of 16 to 20,000 Hz.

In reference to Claim 8, Ewert further discloses a speed transducer (34) mounted to the vehicle which detects the

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velocity of the vehicle, wherein the speed transducer transmits data regarding vehicle velocity to the controller (22), and wherein the controller automatically activates the speaker (40) when the vehicle velocity exceeds a predetermined level, wherein the sounds are emitted at a volume, and wherein the controller increases the volume of the sound emitted from the speaker as the vehicle velocity detected by the transducer increases, see Col.7 lns 55-60 and Claim 7.

In reference to Claim 10, Ewert further discloses the transducer (34) may be mounted to the vehicle drive train or a feed may be taken directly from vehicle with electronic speed sensors. Therefore, it is inherent that Ewert's transducer (34) can determine the speed from the on-board vehicle computer which uses a electronic speed sensor.

In reference to Claim 13, see above rejections in reference to Claim 1. In addition, it is inherent a drive circuit would be included to properly operate the speaker.

In reference to Claim 14, see above rejection in reference to Claims 13 and 4. In addition, Ewert discloses memory unit (38) and EPROM (unlabeled), see Col. 4 lns 36-40 and Col.6 lns 29-44. Therefore, microprocessor is inherent because it is necessary to drive EPROM based memory.

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In reference to Claims 19-20, see above rejections in reference to Claims 13 and 6-7.

In reference to Claim 21, see above rejections in reference to Claims 13 and 8.

In reference to Claim 23, see above rejections in reference to Claims 13 and 10.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-5, 9, 15-18, 22, 24 and 27-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ewert.

In reference to Claim 2, Ewert discloses the use of variable sound patterns and intervals which periodically may be reprogrammed to prevent deer and other animals from growing accustomed or immune to the alerting signal, see Col. 6 lns 37-41. One having ordinary skill in the art at the time the invention was made would have readily recognized that variable

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patterns and intervals which are used so that animals do not grow accustomed to the patterns would require adjustment based on situations, animal species, etc. and therefore, the adjustment of said patterns and intervals would include tweaking with silent periods to keep the patterns variable and unpredictable. Hence, a ratio less than 1:1 for sound and silence would be included as a part of the tweaking process.

In reference to Claims 3-5, one having ordinary skill in the art at the time the invention was made would have readily recognized that variable patterns and intervals which are used so that animals do not grow accustomed to the patterns would require adjustment based on situations, animal species, etc. and therefore, the adjustment of said patterns and intervals would include tweaking with silent periods to keep the patterns variable and unpredictable. Hence, tweaking the system to produce different frequencies, patterns, etc. would have been obvious because the manufacturer and/or user would design the system to most effectively deter the target animals.

In reference to Claim 9, Ewert further discloses the system activates when the control and display unit sense the vehicle is traveling over 35 mph. Therefore, one having ordinary skill in the art at the time the invention was made would have readily recognized that since the system is desired to activate at over

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35 mph, it is then logically ascertainable that the system is not activated under 35 mph and therefore, the system would be programmed to de-activate under 35 mph.

In reference to Claim 15, see above rejections in reference to Claims 13 and 2.

In reference to Claims 16-18, see above rejections in reference to Claims 13 and 3-5.

In reference to Claim 22, see above rejections in reference to Claims 13 and 9.

In reference to Claim 24, see above rejections in reference to Claim 23. In addition, Examiner takes Official Notice that both the concept and the advantages of an OBD-II port connection are well known and expected in the art because it is a readily available and functionally equivalent communication connection.

In reference to Claim 27, see above rejections in reference to Claim 23. In addition, Examiner takes Official Notice that both the concept and the advantages of an OBD-II port connection are well known and expected in the art because it is a readily available and functionally equivalent communication connection.

In reference to Claim 28, see above rejections in reference to Claims 1 and 2.

In reference to Claim 29, see above rejections in reference to Claims 28 and 3.

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In reference to Claim 30, see above rejections in reference to Claim 28. In addition, if the system operates using randomly selected patterns, then it also operates in a random sequence as a sequence is a pattern and a pattern is a sequence.

In reference to Claims 31-34, see above rejections in reference to Claims 28 and 4, 6 and 7, respectively.

In reference to Claim 35, see above rejections in reference to Claims 1, 2, 4 and 13.

In reference to Claim 36, see above rejections in reference to Claims 35 and 14.

In reference to Claim 37-41, see above rejections in reference to Claims 35 and 3, 4, 6, 7 and 27, respectively.

#### ***Allowable Subject Matter***

5. Claims 11-12 and 25-26 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Claims 42-47 are allowed.

7. The following is a statement of reasons for the indication of allowable subject matter: Prior art fails to show



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automatically adjusting the sound pattern in response to the determined location of the vehicle.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Otomo (US 6104283) discloses a pest animal repulsing apparatus. Flick (US 6130605) discloses a vehicle security system with multi-sound pattern alarm and associated methods. Canfield (US 6677853) discloses an animal deterrent using vehicle horn.


### ***Correspondence***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel J Walk whose telephone number is (571) 272-2960. The examiner can normally be reached on M-F: 8:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Wu can be reached on (571) 272-2964. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
DANIEL WU  
SUPERVISORY PATENT EXAMINER  
02/21/05